

STATE OF OKLAHOMA

2nd Session of the 46th Legislature (1998)

HOUSE BILL NO. 2670

By: Seikel

AS INTRODUCED

An Act relating to children; amending 10 O.S. 1991, Section 1125.1, as renumbered by Section 199, Chapter 352, O.S.L. 1995, and as last amended by Section 5, Chapter 350, O.S.L. 1997, 1125.2, as renumbered by Section 199, Chapter 352, O.S.L. 1995, and as last amended by Section 20, Chapter 386, O.S.L. 1997, 1125.2A, as renumbered by Section 199, Chapter 352, O.S.L. 1995, and as last amended by Section 9, Chapter 386, O.S.L. 1997, 1125.2B, as amended by Section 61, Chapter 352, O.S.L. 1995, and as renumbered by Section 199, Chapter 352, O.S.L. 1995, Section 63, Chapter 352, O.S.L. 1995 (10 O.S. Supp. 1997, Sections 7005-1.2, 7005-1.3, 7005-1.4, 7005-1.5 and 7005-1.7), which relate to children's records; authorizing certain persons to obtain certain information from records; defining term; providing for legislative intent; providing an effective date; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 10 O.S. 1991, Section 1125.1, as renumbered by Section 199, Chapter 352, O.S.L. 1995, and as last

amended by Section 5, Chapter 350, O.S.L. 1997 (10 O.S. Supp. 1997, Section 7005-1.2), is amended to read as follows:

Section 7005-1.2 A. Except as provided by this section and except as otherwise specifically provided by state and federal laws, the following records are confidential and shall not be open to the general public or inspected or their contents disclosed:

1. Juvenile court records;
2. Agency records;
3. District attorney's records;
4. Law enforcement records;
5. Nondirectory education records;
6. Social records.

B. The limitation of subsection A of this section shall not apply to statistical information and other abstract information obtained pursuant to the provisions of this Code.

C. Except as authorized by Section 620.6 of this title and this article and except as otherwise specifically provided by state and federal laws pertaining to the confidentiality of records and information and the inspection, release, disclosure, correction or expungement of such information, including but not limited to state and federal laws pertaining to education records, medical records, drug or alcohol treatment records, law enforcement, or social service records, the records listed in subsection A of this section shall be confidential and shall be inspected, released, disclosed, corrected or expunged only pursuant to an order of the court. Except as otherwise provided in Section 601.6 of this title, no subpoena or subpoena duces tecum purporting to compel disclosure of such information or record shall be valid.

D. An order of the court authorizing the inspection, release, disclosure, correction or expungement of confidential records shall be entered by the court only after a review of the records by the court and a determination by the court, with due regard for the

confidentiality of the records and the privacy of persons identified in the records, that a compelling reason exists and such inspection, release or disclosure is necessary for the protection of a legitimate public or private interest.

1. Except for district attorney's records, any order authorizing the disclosure, release or inspection of said records pursuant to this subsection may be conditioned on such terms and restrictions as the court deems necessary and appropriate.

2. Upon the filing of a petition for an order of the court pursuant to this section, the court shall set a date for a hearing and shall provide for reasonable notice to the agency holding the records and the person who is the subject of the record if said person is eighteen (18) years of age or older or to the parents of a child less than age eighteen (18) who is the subject of the record, to the attorneys, if any, of such person, child or parents and any other interested party as ordered by the court. The hearing may be closed at the court's discretion.

E. Any agency or person may seek an order from the juvenile court prohibiting the release of information subject to disclosure without an order of the court pursuant to Section 620.6 of this title and this article. The court may, for good cause shown, prohibit the release of such information or authorize release of the information upon such conditions as the court deems necessary and appropriate.

F. The court may authorize a designated person to review juvenile court confidential reports and records and collect statistical information and other abstract information for research purposes. Such authorization shall be in writing and state specifically the type of information which may be reviewed.

Each person granted permission to inspect confidential reports and records for research purposes shall present a notarized statement to the court stating that the names of children, parents

and such other persons required by the court to be confidential will remain confidential.

G. Nothing in Section 620.6 of this title and this article shall be construed as:

1. Authorizing the inspection of records or the disclosure of information contained in records relating to the provision of benefits or services funded, in whole or in part, with federal funds, except in accord with federal statutes and regulations governing the receipt or use of such funds;

2. Authorizing the disclosure of papers, records, books or other information relating to the adoption of a child required to be kept confidential. The disclosure of such information shall be governed by the Oklahoma Adoption Act;

3. Abrogating any privilege, including the attorney-client privilege, or affecting any limitation on such privilege found in any other statutes;

4. Limiting or otherwise affecting access of parties to a deprived proceeding to records filed with or submitted to the court;

5. Limiting or otherwise affecting access of agencies to information subject to disclosure, review, or inspection by contract or as a condition for the receipt of public funds or participation in any program administered by the agency; and

6. Prohibiting the Department of Human Services from summarizing the outcome of an investigation to the person who reported a known or suspected instance of child abuse or ~~neglect~~ to any person providing services to a child who is or is alleged to be a victim of child abuse.

H. The confidential records listed in subsection A of this section may be inspected and their contents disclosed without a court order to a school district in which the child who is the subject of the record is currently enrolled. The inspection of records and disclosure authorized by this subsection may be limited

to summaries or to information directly necessary for the purpose of such inspection or disclosure. Upon request by the school district, the agency in possession of the records shall provide the requested information to the school district. Any records disclosed as provided by this subsection shall remain confidential. The use of any information shall be limited to the purposes for which disclosure is authorized.

SECTION 2. AMENDATORY 10 O.S. 1991, Section 1125.2, as renumbered by Section 199, Chapter 352, O.S.L. 1995, and as last amended by Section 20, Chapter 386, O.S.L. 1997 (10 O.S. Supp. 1997, Section 7005-1.3), is amended to read as follows:

Section 7005-1.3 A. Juvenile court records may be inspected, and their contents shall be disclosed, without a court order to the following persons upon showing of proper credentials and pursuant to their lawful duties:

1. The court having the child currently before it in any proceeding pursuant to this title, any district court or tribal court to which such proceedings may be transferred, employees and officers of the court in the performance of their duties, including but not limited to guardians ad litem appointed by the court, and court-appointed special advocates;

2. Members of review boards established pursuant to Section 7003-5.1 ~~et seq.~~ of this title, Child Death Review Board, and multidisciplinary personnel. In addition to juvenile court records, members of such review boards may inspect, without a court order, information including but not be limited to:

- a. psychological and medical records,
- b. placement history and information, including the names and addresses of foster parents,
- c. family assessments,
- d. treatment or service plans, and
- e. school records;

3. A district attorney and the employees of an office of a district attorney in the course of their official duties pursuant to this title or the prosecution of crimes against children;

4. The attorney representing a child who is the subject of a proceeding pursuant to the provisions of this title or representing a child pursuant to subsection A of Section 7112 of this title.

Said attorney may also access other records listed in subsection A of Section 7005-1.2 of this title for use in the legal representation of the child;

5. Employees of juvenile bureaus in the course of their official duties pursuant to this title, and employees of the Department of Human Services in the course of their official duties;

6. Employees of a law enforcement agency of this or another state and employees of a child protective service of another state in the course of their official duties pertaining to investigations of a report of known or suspected child abuse ~~or neglect~~ or crimes against children or for the purpose of determining whether to place a child in protective custody;

7. Persons and agencies authorized by Section 7005-1.7 of this title;

8. The Oklahoma Commission on Children and Youth as provided by Sections 601.2 and 601.6 of this title;

9. The Department of Human Services or other public or private agency or individual having court-ordered custody or custody pursuant to Department of Human Services placement of the child who is the subject of the record;

10. The Office of Juvenile Affairs;

11. The child who is the subject of the record and the parents, legal guardian, legal custodian or foster parent of said child;

12. A federally recognized Indian tribe in which the child who is the subject of the record is a member or is eligible to become a member of the tribe and is the biological child of a member of an

Indian tribe pursuant to the Federal Indian Child Welfare Act, P.L. 95-608, and the Oklahoma Indian Child Welfare Act, ~~Section 40 et seq. of this title~~; provided such Indian tribe, in the course of its official duties, is:

- a. investigating a report of known or suspected child abuse ~~or neglect~~ or crimes against children or for the purpose of determining whether to place a child in protective custody, or
- b. providing services to or for the benefit of a child including but not limited to protective, emergency, social and medical services, or
- c. the tribe, the tribal court or the tribal child welfare program has asserted jurisdiction or intervened in any case in which the child is the subject of the proceedings or is a party to the proceedings pursuant to the authority provided in the Oklahoma Indian Child Welfare Act.

The records that are to be provided to Indian tribes under this subsection shall include all case records, reports, and documents as defined in Section 7005-1.1 of this title;

13. The Governor or to any person the Governor designates, in writing, and any federal official of the United States Department of Health and Human Services;

14. Any member of the Legislature approved by the Speaker of the House of Representatives or the President Pro Tempore of the Senate; ~~and~~

15. Persons authorized by and in the manner provided by the Oklahoma Child Abuse Reporting and Prevention Act; and

16. A foster parent, with regard to records concerning the social, medical, psychological or educational needs of a child currently placed with that foster parent or of a child being considered for placement with that foster parent.

B. In accordance with the rules adopted for such purpose pursuant to Section 620.6 of this title, records listed in subsection A of Section 7005-1.2 of this title may be inspected and their contents disclosed without a court order to participating agencies.

C. Records and their contents disclosed without an order of the court as provided by this section shall remain confidential. The use of such information shall be limited to the purposes for which disclosure is authorized. It shall be unlawful and a misdemeanor for any person to furnish any record or disclose any information contained therein for commercial, political or any other unauthorized purpose.

SECTION 3. AMENDATORY 10 O.S. 1991, Section 1125.2A, as renumbered by Section 199, Chapter 352, O.S.L. 1995, and as last amended by Section 9, Chapter 386, O.S.L. 1997 (10 O.S. Supp. 1997, Section 7005-1.4), is amended to read as follows:

Section 7005-1.4 A. Department of Human Services agency records pertaining to a child may be inspected and their contents disclosed without a court order to the following persons upon showing of proper credentials and pursuant to their lawful duties:

1. The court having the child currently before it in any proceeding pursuant to this title, any district court or tribal court to which such proceedings may be transferred, employees and officers of the court in the performance of their duties, including but not limited to guardians ad litem appointed by the court, postadjudicatory review boards, court-appointed special advocates, and members of the Child Death Review Board;

2. Any district court which has ordered a home study by the Department in an action for divorce, annulment, custody of a child, or appointment of a guardian of a child, or any subsequent proceeding in such actions; provided, however, the Department may

limit disclosure in the home study to summaries or to information directly necessary for the purpose of such disclosure;

3. A district attorney and the employees of an office of a district attorney in the course of their official duties pursuant to this title or the prosecution of crimes against children or upon their request in their official capacity as advisor to a grand jury proceeding;

~~3.~~ 4. The attorney representing a child who is the subject of a proceeding pursuant to the provisions of this title or representing a child pursuant to the laws relating to child abuse ~~and neglect~~. Said attorney may also access other records listed in subsection A of Section 7005-1.2 of this title for use in the legal representation of the child;

~~4.~~ 5. Employees of juvenile bureaus in the course of their official duties;

~~5.~~ 6. Employees of a law enforcement agency of this or another state and employees of a child protective service of another state or federally recognized Indian tribe in the course of their official duties pertaining to investigations of a report of known or suspected child abuse ~~or neglect~~ or crimes against children or for the purpose of determining whether to place a child in protective custody;

~~6.~~ 7. The Oklahoma Commission on Children and Youth as provided by Sections 601.2 and 601.6 of this title;

~~7.~~ 8. The Office of Juvenile Affairs;

~~8.~~ 9. Persons and agencies authorized by Section 7005-1.7 of this title;

~~9.~~ 10. Members of multidisciplinary teams or multidisciplinary personnel designated by the Department of Human Services, investigating a report of known or suspected child abuse ~~or neglect~~ or providing services to a child or family which is the subject of the report;

~~10.~~ 11. A physician who has before him a child whom the physician reasonably suspects may be abused ~~or neglected~~ or any health care or mental health professionals involved in the evaluation or treatment of the child, the child's parents, guardian, foster parent, custodian or other family members;

~~11.~~ 12. Any public or private agency or person authorized by the Department to diagnose, or provide care, treatment, supervision or other services to a child who is the subject of a report or record of child abuse ~~or neglect~~, provided the Department may limit such disclosure to summaries or to information directly necessary for the purpose of such disclosure;

~~12.~~ 13. Any federally recognized Indian tribe or state or county child protective services or child welfare agency providing for or supervising the diagnosis, care, treatment, supervision or other services provided such child;

~~13.~~ 14. A parent or guardian of the child who is the subject of such records; provided that records pertaining to any alleged or adjudicated abuse ~~or neglect~~ of said child shall not be inspected or disclosed pursuant to this paragraph;

~~14.~~ 15. Any person or agency for research purposes, if all of the following conditions are met:

- a. the person or agency conducting such research is employed by the State of Oklahoma or is under contract with this state and is authorized by the Department of Human Services to conduct such research, and
- b. the person or agency conducting the research ensures that all documents containing identifying information are maintained in secure locations and access to such documents by unauthorized persons is prohibited; that no identifying information is included in documents generated from the research conducted; and that all

identifying information is deleted from documents used
in the research when the research is completed;

~~15.~~ 16. Persons authorized by and in the manner provided by the
Oklahoma Child Abuse Prevention and Reporting Act;

17. A foster parent, with regard to records concerning the
social, medical, psychological or educational needs of a child
currently placed with that foster parent or of a child being
considered for placement with that foster parent;

~~16.~~ 18. The Governor or to any person the Governor designates,
in writing, and any federal official of the United States Department
of Health and Human Services;

~~17.~~ 19. The Oklahoma Health Care Authority;

~~18.~~ 20. Any member of the Legislature approved by the Speaker
of the House of Representatives or the President Pro Tempore of the
Senate; and

~~19.~~ 21. Any person or agency authorized to receive any paper,
record, book or other information pursuant to the Oklahoma Adoption
Act pertaining to a child who is the subject of an adoption
proceeding or the parents, grandparents or relatives of such child.

B. In accordance with the rules adopted for such purpose
pursuant to Section 620.6 of this title, records may be inspected
and their contents disclosed without a court order to participating
agencies.

C. Nothing in this section shall be construed as prohibiting
the Department from disclosing such confidential information as may
be necessary to secure appropriate care, treatment, protection or
supervision of a child alleged to be abused ~~or neglected~~.

D. Records and their contents disclosed pursuant to this
section shall remain confidential. The use of such information
shall be limited to the purposes for which disclosure is authorized.
It shall be unlawful and a misdemeanor for any person to furnish any

record or disclose any information contained therein for any unauthorized purpose.

E. 1. In cases involving the death or near death of a child when a person responsible for the child has been charged by information or indictment with committing a crime resulting in the child's death or near death, there shall be a presumption that the best interest of the public will be served by public disclosure of certain information concerning the circumstances of the investigation of the death or near death of the child and any other investigations concerning that child, or other children living in the same household.

2. At any time subsequent to seven (7) days of the date the person responsible for the child has been criminally charged the Department of Human Services, the Oklahoma Commission on Children and Youth, or the district attorney may release the following information to the public:

~~1.—A~~ a. a confirmation that a report has been made concerning the alleged victim or other children living in the same household and whether an investigation has begun~~†~~

~~2.—Confirmation~~ b. confirmation as to whether previous reports have been made and the dates thereof, the dates and outcome of any investigations or actions taken by the Department of Human Services in response to any report of child abuse ~~or neglect~~, and any actions taken by the district attorney after submission of any investigative report~~†~~, and

~~3.—The~~ c. the dates of any judicial proceedings prior to the child's death or near death, a summary of each participant's recommendations made at the

judicial proceedings, and the rulings of the court.

3. Any disclosure of information pursuant to this section shall not identify or provide an identifying description of any complainant or reporter of child abuse ~~or neglect~~, and shall not identify the name of the child victim's siblings or other children living in the same household, the parent or other person responsible for the child or any other member of the household, other than the person criminally charged.

For purposes of this section, the term "near death" means the child is in serious or critical condition, as certified by a physician.

SECTION 4. AMENDATORY 10 O.S. 1991, Section 1125.2B, as amended by Section 61, Chapter 352, O.S.L. 1995, and as renumbered by Section 199, Chapter 352, O.S.L. 1995 (10 O.S. Supp. 1997, Section 7005-1.5), is amended to read as follows:

Section 7005-1.5 Department of Human Services agency records pertaining to a child may be inspected and their contents disclosed and released without a court order to a federally recognized Indian tribe in which the child who is the subject of the record is a member or is eligible to become a member of the tribe and is the biological child of a member of an Indian tribe pursuant to the Federal Indian Child Welfare Act, P.L. 95-608, and the Oklahoma Indian Child Welfare Act, ~~Section 40 et seq. of Title 10 of the Oklahoma Statutes~~; provided such Indian tribe, in the course of its official duties, is:

- a. investigating a report of known or suspected child abuse ~~or neglect~~ or crimes against children or for the purpose of determining whether to place a child in protective custody, or

- b. providing services to or for the benefit of a child including but not limited to protective, emergency, social and medical services, or
- c. the tribe, the tribal court or the tribal child welfare program has asserted jurisdiction or intervened in any case in which the child is the subject of the proceedings or is a party to the proceedings pursuant to the authority provided in the Oklahoma Indian Child Welfare Act.

The records that are to be provided to Indian tribes under this section shall include all case records, reports, and documents as defined in Section 7005-1.1 of this title.

SECTION 5. AMENDATORY Section 63, Chapter 352, O.S.L. 1995 (10 O.S. Supp. 1997, Section 7005-1.7), is amended to read as follows:

Section 7005-1.7 ~~When rules pertaining~~ A. Pursuant to the federal Child Abuse Prevention and Treatment Act which provide provides for expanded disclosure and sharing of records and reports with persons and entities who have a reason for the records and reports to protect children from child abuse and neglect ~~are promulgated by the Administration of Children, Youth and Families of the federal Department of Health and Human Services, the Oklahoma Commission for Human Services shall promulgate emergency and permanent rules which will provide for disclosure of all relevant information to any federal, state or local governmental entity, or any agent of such entity, with a predetermined need for such information~~ persons and entities authorized by this article, the Child Abuse Reporting and Prevention Act, the Oklahoma Foster Care and Out-of-Home Placement Act, and any other person or entity specifically authorized by law in order to carry out ~~its~~ their responsibilities under law to provide services to children and to protect children from abuse and neglect. Rules shall provide for

the disclosure of all relevant information concerning reports of child abuse ~~and neglect~~ to the persons or entities authorized by law to receive such information.

B. The State of Oklahoma declares that the receipt of confidential information by persons authorized to receive confidential information relating to children, pursuant to subsection A of this section, is essential to the responsibility of the state to care and protect its children.

SECTION 6. This act shall become effective November 1, 1998.

SECTION 7. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

46-2-9105

KSM